No. 24-1224

IN THE

Supreme Court of the United States

DENVER WARD,

Petitioner,

v.

LAURA FISHER, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Under Oklahoma law, clients can bring both legal malpractice claims and breach of contract claims if there is a specific, "spelled-out" performance promised by the attorney, in addition to the agreement of representation. Did the Tenth Circuit below err in affirming the district court's ruling that the engagement letter between Petitioner Ward and Respondent Grundy did not constitute a specific performance promised, as required by Oklahoma law?

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INTRODUCTION

This is a statute of limitations matter arising under Oklahoma law. The Petition not only fails to satisfy this Court's traditional certiorari criteria, it also misconstrues fundamental aspects of both Oklahoma and federal law. That is despite the two courts below describing in painstaking detail why Petitioner Denver Ward's ("Ward") claims against Respondent Brad Grundy ("Grundy") are time-barred. Those decisions below correctly apply Oklahoma law.

Ward nevertheless insists that the applicable statute of limitation period for an Oklahoma legal malpractice claim is "a question of national importance" despite never having characterized it as such below. Pet. 9. Ward also cites several other state's appellate courts coming to different conclusions on that question, suggesting that there is a "significant split" amongst the states. Pet. 10. That characterization is irrelevant—States can choose their own limitations period for claims arising under *their own* laws. That is part-and-parcel of federalism.

Ward also misstates Oklahoma law. Ward claims that *Fed. Sav. & Loan Ass'n v. Dabney*, 846 P.2d 1088 (Okla. 1993) allows him to bring both negligence (legal malpractice) and breach of contract claims against Grundy. But *Dabney* explicitly forecloses Ward's claim in this circumstance. *Dabney* requires a specific, "spelled-out" performance promised by the attorney *in addition to* the agreement to represent the client for negligence and breach of contract claims to both be viable. Ward claims the engagement letter (at Pet. App. 52a) *is* that specific performance promised by Grundy. But both courts below

correctly disagreed with Ward's proposition. And now Ward invites this Court to disturb not only those well-reasoned decisions, but also the federal-state balance. This Court should reject that extraordinary invitation and deny Ward's Petition.

STATEMENT OF THE CASE

1. This appeal comes at the motion to dismiss stage. Pet. App. 6a. In January 2016, Ward became involved in a paternity and custody action (the "Paternity Action") in Oklahoma state court. Pet. App. 2a. Ward initially retained Grundy, a licensed attorney in Oklahoma, to represent him in the Paternity Action against Billinglsy. *Id.* The engagement letter reflecting that agreement states that Grundy would "represent [Ward] in connection with [his] paternity action with Debra Billingsley (sic)." Pet. App. 52a. Almost a year later, Ward retained new counsel after becoming allegedly dissatisfied with Grundy's representation. Pet. App. 3a. In April 2019, Ward filed suit against Grundy and his law firm in Oklahoma state court, claiming negligence and breach of contract as to Grundy representing Ward in his Paternity Action. Pet. App. 4a. But in February 2020, Ward voluntarily dismissed the lawsuit without prejudice without having served Grundy or his law firm. *Id.* In September 2020, Ward refiled his case against Grundy in federal district court. *Id.* Ward, however, voluntarily dismissed the lawsuit without prejudice again in November 2022. *Id.*

2. On November 16, 2023, however, Ward filed suit against Dr. Laura Fisher, a court-appointed Guardian Ad Litem, Carol L. Swenson, a court-appointed custody evaluator, and Grundy in Oklahoma state court, asserting

both federal and state law claims. *Id.* Fisher then removed the case to the United States District Court for the Northern District of Oklahoma, pursuant to 28 U.S.C. § 1367. Pet. App. 5a. As court appointed actors, Fisher and Swenson then moved to dismiss the case on quasi-judicial immunity grounds under Fed. R. Civ. P 12 (b)(6). *Id.* Grundy moved to dismiss the negligence and breach of contract claims against him as untimely. *Id.*

The district court dismissed all of Ward's claims against all defendants. Pet. App.6a. For Grundy's part, the district court noted that Ward conceded his negligence claim was time-barred. *Id.* The court in turn concluded that Ward's breach of contract claim was time-barred under Oklahoma law, dismissing Ward's claims. *Id.*

The Tenth Circuit Court of Appeals affirmed the district court's dismissals against all defendants. Pet. App. 8a, 10a. Regarding Grundy's dismissal, the Tenth Circuit noted how Oklahoma law, under *Dabney*, 846 P.2d 1088, requires a specific, "spelled out" promise between the attorney and client—on top of the general representation agreement—for both a breach of contract and negligence claim to be brought. Pet. App. 9a. "If . . . the underlying contract merely incorporates by reference or by implication a general standard of skill or care which the defendant would be bound by independent of the contract, then only a tort claim may be brought, and such claim is governed by the tort limitation period." *Id.* (internal citations omitted). Ward argued on appeal that the engagement letter language (Grundy "represent[ing] [Ward] in connection with [his] paternity action") is the *Dabney*-required spelled out performance promised by Grundy "without references and irrespective of general

standards" of skill or care. *Id.* Ward thus argued that the engagement letter entitled him to the longer five-year breach of contract limitations period under Okla. Stat. tit. 12, § 95 (2025).

The Tenth Circuit rejected Ward's argument as there was no specific performance promised by Grundy. "The contractual language Ward relies on simply described the general nature of Mr. Grundy's engagement, i.e., Mr. Grundy agreed to represent Mr. Ward in the Paternity Action." Pet. App. 10a. "We agree with the district court that, under *Dabney*, Mr. Ward is not entitled to the benefit of the five-year limitations period applicable to breach-of-contract claims." *Id.* Never was it suggested in any of this litigation, as Ward now does, that whether a legal malpractice claim sounds in tort or contract is a question of national importance.

REASONS FOR DENYING THE PETITION

I. Ward's Question Presented Is Not Implicated.

A. States Determine Their Own Statute of Limitations.

Ward's arguments as to Grundy rest on fundamental misconceptions. First, in a legal malpractice action under Oklahoma law, Ward claims that whether "attorney-client agreements" are "written contracts" for statute of limitations purposes, Pet. I, is "a question of *national* importance." Pet. 9. (emphasis added). That imposition implies that states have a minimal interest in regulating the timeliness of claims arising under their own laws. However, the Tenth Amendment of the United States is

interpreted to protect a state's interest in determining its own statutes of limitation.

"The powers not delegated to the United States by the Constitution . . . are reserved to the States respectively, or to the people." U.S. Const. amend. X. Those reserved (plenary) powers "extend to all the objects" that "concern the lives, liberties, and properties of the people," and the State's "internal order, improvement and prosperity." THE FEDERALIST NO. 45 (James Madison). A state legislature determining whether a legal malpractice claim sounds in tort or sounds in contract for statute of limitation purposes is an exercise of such plenary power concerning the States' "internal order" and "improvement." *Id.*

Citing non-Oklahoma jurisdictions with differing conclusions on whether attorney-client engagement letters are contracts for limitation purposes is meaningless. *See* Pet. 10–11. Ward claims that this is a "significant split in authority" needing resolution by this Court. Pet. 10. But Ward misunderstands a critical aspect of federalism. States splitting on matters reserved to the states, free from the federal government's imposition, "is one of the happy incidents of the federal system." *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). This particular happy incident—that states retain jurisdiction to impose their own limitation statutes—is "a rule" "as old as the Republic." *Sun Oil Co. v. Wortman*, 486, U.S. 717, 730 (1988). Those statutes serve the State's interest by regulating its court's workload and determining when claims become "too stale to be adjudicated." *Id.* This Court should thus avoid Ward's invitation to tip this fundamental balance between state and federal interests. States are—and should continue to

be—free to choose their own statute of limitation period as to state law causes of action.

B. Under Oklahoma Law, Legal Malpractice Claims Sound in Tort.

OKLA. STAT. tit. 12, § 95 (2025) provides a two-year statute of limitation period for actions sounding in tort. That statute also provides a five-year limitations period for written contract actions, a three-year limitations period for oral contract actions, and a two-year limitations period for certain tort actions. *Id.* The Oklahoma Supreme Court repeatedly held legal malpractice actions are "action[s] [in] tort" "governed by the two-year statute of limitation found in [OKLA. STAT. tit. 12, § 95 (1993)]." *Stephens v. GMC*, 905 P.2d at 798 (citing *Funnell v. Jones*, 737 P.2d 105, 107 (Okla. 1985) (stating that a medical or legal malpractice case "based on a contract of employment" is an action "in tort and is governed by the two year statute of limitations" in Oklahoma));

Ward claims the five-year written contract statute of limitations outlined in OKLA. STAT. tit. 12, § 95 (2025) applies. He does so based on two cases: *Dabney*, 846 P.2d 1088 and *Cortwright v. City of Oklahoma City*, 951 P.2d 93 (Okla. 1997).

Dabney involved a bank's tort and breach of oral contact claims, under Oklahoma law, against an attorney and his law firm. *Dabney*, 846 P.2d at 1090. The bank alleged that the attorney was not only engaged to provide a title opinion, but also to act as an abstractor by searching nine-years' worth of county clerk records. *Id.* at 1091. The Oklahoma Supreme Court reversed the lower court's

dismissal of the bank's claims on the grounds that the oral contract constituted a specific, "spelled out" promise on top of the employment contract, entitling the bank to a three-year limitations period. *Id.* at 1092. The *Dabney* court reiterated that if an employment contract "merely incorporates by reference or by implication a general standard of skill or care which a defendant would be bound independent of the contract a tort case is presented governed by the tort limitation period." *Id.* Only "where the parties have spelled out the performance promised by defendant and defendant commits to the performance without reference to and irrespective of any general standard, a contract theory would be viable" as well. *Id.*

Ward asserts the Grundy-Ward engagement letter *is* the specific promise required by *Dabney*. Ward's understanding of *Dabney* is in clear conflict with the *Dabney* decision itself and the decisions of the courts below in this matter. The Grundy-Ward engagement letter *only* provides Grundy would "represent [Ward] in connection with [the] paternity action with Debra Billingsley." Pet. 22. A promise to represent a client is not a specific promise worthy of the contract limitations period like the nine-year county clerk records search promised by the attorney in *Dabney*. Nor could it be. Grundy *did* represent Ward in the Paternity Action. Pet. 5. Grundy made no other promises to Ward in the engagement letter.

Ward's reliance on *Cortwright*, 951 P.2d 93 is dedicated to an issue not in dispute—that the Grundy-Ward engagement letter is a written contract. *Cortwright* involved an alleged deadline extension to file a governmental tort claims action against the City of Oklahoma City. *Id.* at 94–95. The court focused their analysis on whether

an attorney's letter to the City was sufficient to toll the running of the start of the limitation period for such an action. *Id.* The *Cortwright* decision says *nothing* about whether a contract limitations period applies to a malpractice claim. Oklahoma law is clear—without any specified performance, an engagement letter does not give rise to a five-year statute of limitations period. Given the well-settled Oklahoma law, this Court should deny Ward's Petition for Writ of Certiorari.

II. The Decisions Below Are Correct.

The Court should also deny Ward's Petition because the decisions below are consistent with Oklahoma law.

The United States District Court for the Northern District of Oklahoma dismissed *all* of Ward's claims against *all* defendants. The District Court correctly did so under the *Dabney* framework. The court reasoned that "the written engagement letter between Ward and Grundy has ***no*** specificity beyond that Ward select[ed] this firm to represent [him] in connection with [his] paternity action with Debra Billingsley.' This merely restates Grundy's normal duty of care." Pet. App. 21a–22a. (emphasis in original).

The Tenth Circuit correctly affirmed the district court's dismissal on the same grounds. Citing both *Dabney* and *Funnell*, the Tenth Circuit dismissed Ward's claims since the engagement letter, in their view, "simply describes the general nature of Mr. Grundy's engagement, i.e., Mr. Grundy agreed to represent Mr. Ward in the Paternity Action." Pet. App. 10a. "It did not, as Mr. Ward suggests, spell out the performance promised by Mr.

Grundy." *Id.* This reasoning reflects almost a century of Oklahoma law saying the same. *See e.g.*, *Seanor v. Browne*, 7 P.2d 627 (Okla. 1932). As such, a near century of Oklahoma law, as well as centuries of federal-state balance principles, should not be disturbed.

CONCLUSION

For the foregoing reasons, the Court should deny Petitioner Denver Ward's Petition for Certiorari as it relates to Respondent Brad Grundy.

Respectfully submitted,

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